



Universal Service Administrative Company  
Schools & Libraries Division

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Administrator's Decision on Appeal – Funding Year 2014-2015

March 15, 2016

Charles W. Cagle  
Lewis, Thomason, King, Krieg & Waldrop, P. C.  
424 Church Street, Suite 2500  
P. O. Box 198615  
Nashville, TN 37219

Re: Applicant Name: DAYTON CITY SCHOOL DISTRICT  
Billed Entity Number: 128277  
Form 471 Application Number: 972289  
Funding Request Number(s): 2647173  
Your Correspondence Dated: December 04, 2015

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2647173  
Decision on Appeal: **Denied**  
Explanation:

- The FRN was denied because the applicant failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). In addition, SCSDC appeal did not justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution.

SCSDC argues there was a valid contract under Tennessee law and that there was offer and acceptance. SCSDC explains that the memorialization of the contract was through the MNPS contract that was offered as an alternative in ENA's bid proposal to SCSDC. SCSDC also asserts that the FCC lessened the written contract requirement in the E-rate Modernization Order and that there was a legally binding agreement based on ENA's performance via the MNPS contract.

SCSDC asserts there was an offer and an acceptance and a valid contract existed under Tennessee law.

USAC does not have evidence of valid acceptance. SCSDC refers to a March 4, 2013 award letter in its appeal, but a copy of this award letter was not provided.

The FCC lessened the written contract requirement in the E-rate Modernization Order codifying the legally binding standard effective November 2014. At the time SCSDC entered into a contract with ENA, the legally binding standard was not effective and is not applicable to SCSDC contract. SCSDC was required to demonstrate that a contract was in place with ENA at the time its FCC Form 471 certification. As noted above, SCSDC has not provided evidence that it accepted ENA's proposal at the time the FCC Form 471 was submitted.

Although there are provisions in the Tennessee code that would allow SCSDC to use certain contracts that are executed by other local governmental units or LEAs, the provisions cited by SCSDC did not become effective until July 1, 2013 and were to apply to contracts that were executed on or after that date. In addition, the former Tennessee statutes for allowing local governmental units and LEAs to purchase off of existing contracts would not apply to the 2011 Metro-Nashville contract for two reasons. Section 12-3-1004(b)(1)-(2), allowed LEAs to purchase "equipment" based on another LEA's existing contract. ENA's contract with Metro-Nashville was not limited to "equipment." Further, section 12-3-1004(c)(1)-(2) allowed local governmental units to purchase "same goods and equipment" where the unit price did not exceed ten thousand dollars. The 2011 Metro-Nashville contract would not fall within this provision because it was for services and not limited to "goods and equipment" and the unit price was greater than \$10,000.

SCSDC argues that the prices offered by the service provider, ENA, were below the prevailing market rates. SCSDC also asserts that the AT&T's bid to the SCSDC was actually higher than ENA's bid by \$1.8 million. SCSDC states that the figures in AT&T's bid response did not include all charges for the requested services. For example, AT&T did not include installation charges in its bid pricing because it had not yet engineered, much less installed, the circuits required to render the services required by the RFP. SCSDC further proffers that the quality of service proposed by ENA was higher than that offered by AT&T as determined through analysis of the bid responses and prior experience of the consortium members with both bidders.

AT&T's bid was not higher than ENA's bid. SCSDC assumes that AT&T's bid price included the pricing from a NetTN contract referenced in AT&T's bid. Also, the evaluation forms clearly account for the costs that SCSDC claims AT&T excluded from their bid price. Further, SCSDC did not provide any documentation to support the allegation that AT&T's hypothetical "actual" bid price would be \$11.1 million and therefore \$1.8 million higher than ENA's bid.

The claim that ENA's bid was lower than AT&T's prices elsewhere under a state contract does not change the fact that the price of the ENA bid was \$3 million more than the price of AT&T's bid. Comparing ENA's SCSDC bid to an entirely unrelated AT&T bid is not a fair comparison.

SCSDC did not provide any supporting documentation to support this assertion. Instead, SCSDC cites to a portion of the AT&T bid that describes AT&T's projected timeline for installation after the contract has been awarded. While SCSDC argues that this language excludes installation costs, this section does not mention costs associated with installation and is in direct response to SCSDC's question, "What delivery concerns do you have in performing this contract?" AT&T's response to the question, and the title of this particular section, is "AT&T has no delivery concerns in support of this contract." SCSDC has misconstrued the meaning of this portion of AT&T's bid language in its appeal.

SCSDC's arguments and assertions also fail to identify how AT&T's service offerings are of a lower quality than ENA's service offerings. SCSDC mischaracterizes the AT&T bid by stating, among other assertions, that it failed to commit to a July 1 start date, failed to identify personnel, and failed to give assurances of timely performance. AT&T's bid does not support SCSDC's characterization of AT&T's shortcomings.

SCSDC has not addressed the issue of why it selected to use the MNPS contract with ENA that included higher pricing than ENA's bid proposal to SCSDC. ENA did not reduce the pricing of the MNPS contract until December 2013, nearly a year after SCSDC submitted its FCC Form 471 application to USAC. Therefore, even relying on the ENA pricing, SCSDC did not select the most cost-effective service offering when it decided to piggyback off the MNPS contract.

SCSDC argues the consortium conducted a fair and open competitive bidding process that evaluated the bidders on price and other factors, as allowed by Commission rules. Additionally, SCSDC asserts the consortium met the Commission's competitive bidding requirements, including using price as a primary factor.

Although SCSDC asserts that it complied with the FCC's competitive bidding rules, SCSDC did not demonstrate that it selected the most cost-effective bid. SCSDC did not provide any supporting documentation to justify the selection of ENA's bid, which was \$3 million more than the AT&T bid, as the most cost-effective solution. In addition, SCSDC has not explained how its decision to piggyback off the MNPS contract which had higher pricing than ENA's bid proposal to SCSDC was the most cost-effective service offering. Although ENA eventually lowered its pricing in the MNPS contract to match the pricing in the SCSDC bid proposal, this amendment was nearly a year after SCSDC submitted its FCC form 471 application.

With respect to SCSDC's arguments that the consortium will suffer significant harm if USAC does not reverse its decisions and that the denials would set a

precedent requiring schools and libraries to purchase the cheapest services, regardless of quality and other factors, USAC cannot make policy decisions.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Matt Marcus



Charles W. Cagle  
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Billed Entity Number: 128277  
Form 471 Application Number: 972289  
Form 486 Application Number:



Universal Service Administrative Company  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2015-2016**

March 15, 2016

Charles W. Cagle  
Lewis, Thomason, King, Krieg & Waldrop, P. C.  
424 Church Street, Suite 2500  
P. O. Box 198615  
Nashville, TN 37219

Re: Applicant Name: DAYTON CITY SCHOOL DISTRICT  
Billed Entity Number: 128277  
Form 471 Application Number: 1012352  
Funding Request Number(s): 2767910  
Your Correspondence Dated: December 04, 2015

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's funding commitment decision for the FCC Form 471 Application Number and funding requests number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s): 2767910  
Decision on Appeal: **Denied**  
Explanation:

- The FRNs were denied because the applicant failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). In addition, SCSDC appeal did not justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution.

SCSDC argues there was a valid contract under Tennessee law and that there was offer and acceptance. SCSDC explains that the memorialization of the contract was through the MNPS contract that was offered as an alternative in ENA's bid proposal to SCSDC. SCSDC also asserts that the FCC lessened the written contract requirement in the E-rate Modernization Order and that there was a

legally binding agreement based on ENA's performance via the MNPS contract. SCSDC asserts there was an offer and an acceptance and a valid contract existed under Tennessee law.

USAC does not have evidence of valid acceptance. SCSDC refers to a March 4, 2013 award letter in its appeal, but a copy of this award letter was not provided.

The FCC lessened the written contract requirement in the E-rate Modernization Order codifying the legally binding standard effective November 2014. At the time SCSDC entered into a contract with ENA, the legally binding standard was not effective and is not applicable to SCSDC contract. SCSDC was required to demonstrate that a contract was in place with ENA at the time its FCC Form 471 certification. As noted above, SCSDC has not provided evidence that it accepted ENA's proposal at the time the FCC Form 471 was submitted.

Although there are provisions in the Tennessee code that would allow SCSDC to use certain contracts that are executed by other local governmental units or LEAs, the provisions cited by SCSDC did not become effective until July 1, 2013 and were to apply to contracts that were executed on or after that date. In addition, the former Tennessee statutes for allowing local governmental units and LEAs to purchase off of existing contracts would not apply to the 2011 Metro-Nashville contract for two reasons. Section 12-3-1004(b)(1)-(2), allowed LEAs to purchase "equipment" based on another LEA's existing contract. ENA's contract with Metro-Nashville was not limited to "equipment." Further, section 12-3-1004(c)(1)-(2) allowed local governmental units to purchase "same goods and equipment" where the unit price did not exceed ten thousand dollars. The 2011 Metro-Nashville contract would not fall within this provision because it was for services and not limited to "goods and equipment" and the unit price was greater than \$10,000.

SCSDC argues that the prices offered by the service provider, ENA, were below the prevailing market rates. SCSDC also asserts that the AT&T's bid to the SCSDC was actually higher than ENA's bid by \$1.8 million. SCSDC states that the figures in AT&T's bid response did not include all charges for the requested services. For example, AT&T did not include installation charges in its bid pricing because it had not yet engineered, much less installed, the circuits required to render the services required by the RFP. SCSDC further proffers that the quality of service proposed by ENA was higher than that offered by AT&T as determined through analysis of the bid responses and prior experience of the consortium members with both bidders.

AT&T's bid was not higher than ENA's bid. SCSDC assumes that AT&T's bid price included the pricing from a NetTN contract referenced in AT&T's bid. Also, the evaluation forms clearly account for the costs that SCSDC claims AT&T excluded from their bid price. Further, SCSDC did not provide any documentation to support the allegation that AT&T's hypothetical "actual" bid price would be \$11.1 million and therefore \$1.8 million higher than ENA's bid.

The claim that ENA's bid was lower than AT&T's prices elsewhere under a state contract does not change the fact that the price of the ENA bid was \$3 million more than the price of AT&T's bid. Comparing ENA's SCSDC bid to an entirely unrelated AT&T bid is not a fair comparison.

SCSDC did not provide any supporting documentation to support this assertion. Instead, SCSDC cites to a portion of the AT&T bid that describes AT&T's projected timeline for installation after the contract has been awarded. While SCSDC argues that this language excludes installation costs, this section does not mention costs associated with installation and is in direct response to SCSDC's question, "What delivery concerns do you have in performing this contract?" AT&T's response to the question, and the title of this particular section, is "AT&T has no delivery concerns in support of this contract." SCSDC has misconstrued the meaning of this portion of AT&T's bid language in its appeal.

SCSDC's arguments and assertions also fail to identify how AT&T's service offerings are of a lower quality than ENA's service offerings. SCSDC mischaracterizes the AT&T bid by stating, among other assertions, that it failed to commit to a July 1 start date, failed to identify personnel, and failed to give assurances of timely performance. AT&T's bid does not support SCSDC's characterization of AT&T's shortcomings.

SCSDC has not addressed the issue of why it selected to use the MNPS contract with ENA that included higher pricing than ENA's bid proposal to SCSDC. ENA did not reduce the pricing of the MNPS contract until December 2013, nearly a year after SCSDC submitted its FCC Form 471 application to USAC. Therefore, even relying on the ENA pricing, SCSDC did not select the most cost-effective service offering when it decided to piggyback off the MNPS contract.

SCSDC argues the consortium conducted a fair and open competitive bidding process that evaluated the bidders on price and other factors, as allowed by Commission rules. Additionally, SCSDC asserts the consortium met the Commission's competitive bidding requirements, including using price as a primary factor.

Although SCSDC asserts that it complied with the FCC's competitive bidding rules, SCSDC did not demonstrate that it selected the most cost-effective bid. SCSDC did not provide any supporting documentation to justify the selection of ENA's bid, which was \$3 million more than the AT&T bid, as the most cost-effective solution. In addition, SCSDC has not explained how its decision to piggyback off the MNPS contract which had higher pricing than ENA's bid proposal to SCSDC was the most cost-effective service offering. Although ENA eventually lowered its pricing in the MNPS contract to match the pricing in the SCSDC bid proposal, this amendment was nearly a year after SCSDC submitted its FCC form 471 application.

With respect to SCSDC's arguments that the consortium will suffer significant harm if USAC does not reverse its decisions and that the denials would set a



precedent requiring schools and libraries to purchase the cheapest services, regardless of quality and other factors, USAC cannot make policy decisions.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:  
<http://www.usac.org/sl/about/program-integrity/appeals.aspx>.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

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P. O. Box 198615  
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Billed Entity Number: 128277  
Form 471 Application Number: 1012352  
Form 486 Application Number:



Universal Service Administrative Company  
Schools & Libraries Division

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Administrator's Decision on Appeal – Funding Year 2015-2016

March 15, 2016

Charles W. Cagle  
Lewis, Thomason, King, Krieg & Waldrop, P. C.  
424 Church Street, Suite 2500  
P. O. Box 198615  
Nashville, TN 37219

Re: Applicant Name: DAYTON CITY SCHOOL DISTRICT  
Billed Entity Number: 128277  
Form 471 Application Number: 1020094  
Funding Request Number(s): 2768077  
Your Correspondence Dated: December 04, 2015

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's funding commitment decision for the FCC Form 471 Application Number and funding requests number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s): 2768077  
Decision on Appeal: **Denied**  
Explanation:

- The FRNs were denied because the applicant failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). In addition, SCSDC appeal did not justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution.

SCSDC argues there was a valid contract under Tennessee law and that there was offer and acceptance. SCSDC explains that the memorialization of the contract was through the MNPS contract that was offered as an alternative in ENA's bid proposal to SCSDC. SCSDC also asserts that the FCC lessened the written contract requirement in the E-rate Modernization Order and that there was a

legally binding agreement based on ENA's performance via the MNPS contract. SCSDC asserts there was an offer and an acceptance and a valid contract existed under Tennessee law.

USAC does not have evidence of valid acceptance. SCSDC refers to a March 4, 2013 award letter in its appeal, but a copy of this award letter was not provided.

The FCC lessened the written contract requirement in the E-rate Modernization Order codifying the legally binding standard effective November 2014. At the time SCSDC entered into a contract with ENA, the legally binding standard was not effective and is not applicable to SCSDC contract. SCSDC was required to demonstrate that a contract was in place with ENA at the time its FCC Form 471 certification. As noted above, SCSDC has not provided evidence that it accepted ENA's proposal at the time the FCC Form 471 was submitted.

Although there are provisions in the Tennessee code that would allow SCSDC to use certain contracts that are executed by other local governmental units or LEAs, the provisions cited by SCSDC did not become effective until July 1, 2013 and were to apply to contracts that were executed on or after that date. In addition, the former Tennessee statutes for allowing local governmental units and LEAs to purchase off of existing contracts would not apply to the 2011 Metro-Nashville contract for two reasons. Section 12-3-1004(b)(1)-(2), allowed LEAs to purchase "equipment" based on another LEA's existing contract. ENA's contract with Metro-Nashville was not limited to "equipment." Further, section 12-3-1004(c)(1)-(2) allowed local governmental units to purchase "same goods and equipment" where the unit price did not exceed ten thousand dollars. The 2011 Metro-Nashville contract would not fall within this provision because it was for services and not limited to "goods and equipment" and the unit price was greater than \$10,000.

SCSDC argues that the prices offered by the service provider, ENA, were below the prevailing market rates. SCSDC also asserts that the AT&T's bid to the SCSDC was actually higher than ENA's bid by \$1.8 million. SCSDC states that the figures in AT&T's bid response did not include all charges for the requested services. For example, AT&T did not include installation charges in its bid pricing because it had not yet engineered, much less installed, the circuits required to render the services required by the RFP. SCSDC further proffers that the quality of service proposed by ENA was higher than that offered by AT&T as determined through analysis of the bid responses and prior experience of the consortium members with both bidders.

AT&T's bid was not higher than ENA's bid. SCSDC assumes that AT&T's bid price included the pricing from a NetTN contract referenced in AT&T's bid. Also, the evaluation forms clearly account for the costs that SCSDC claims AT&T excluded from their bid price. Further, SCSDC did not provide any documentation to support the allegation that AT&T's hypothetical "actual" bid price would be \$11.1 million and therefore \$1.8 million higher than ENA's bid.



The claim that ENA's bid was lower than AT&T's prices elsewhere under a state contract does not change the fact that the price of the ENA bid was \$3 million more than the price of AT&T's bid. Comparing ENA's SCSDC bid to an entirely unrelated AT&T bid is not a fair comparison.

SCSDC did not provide any supporting documentation to support this assertion. Instead, SCSDC cites to a portion of the AT&T bid that describes AT&T's projected timeline for installation after the contract has been awarded. While SCSDC argues that this language excludes installation costs, this section does not mention costs associated with installation and is in direct response to SCSDC's question, "What delivery concerns do you have in performing this contract?" AT&T's response to the question, and the title of this particular section, is "AT&T has no delivery concerns in support of this contract." SCSDC has misconstrued the meaning of this portion of AT&T's bid language in its appeal.

SCSDC's arguments and assertions also fail to identify how AT&T's service offerings are of a lower quality than ENA's service offerings. SCSDC mischaracterizes the AT&T bid by stating, among other assertions, that it failed to commit to a July 1 start date, failed to identify personnel, and failed to give assurances of timely performance. AT&T's bid does not support SCSDC's characterization of AT&T's shortcomings.

SCSDC has not addressed the issue of why it selected to use the MNPS contract with ENA that included higher pricing than ENA's bid proposal to SCSDC. ENA did not reduce the pricing of the MNPS contract until December 2013, nearly a year after SCSDC submitted its FCC Form 471 application to USAC. Therefore, even relying on the ENA pricing, SCSDC did not select the most cost-effective service offering when it decided to piggyback off the MNPS contract.

SCSDC argues the consortium conducted a fair and open competitive bidding process that evaluated the bidders on price and other factors, as allowed by Commission rules. Additionally, SCSDC asserts the consortium met the Commission's competitive bidding requirements, including using price as a primary factor.

Although SCSDC asserts that it complied with the FCC's competitive bidding rules, SCSDC did not demonstrate that it selected the most cost-effective bid. SCSDC did not provide any supporting documentation to justify the selection of ENA's bid, which was \$3 million more than the AT&T bid, as the most cost-effective solution. In addition, SCSDC has not explained how its decision to piggyback off the MNPS contract which had higher pricing than ENA's bid proposal to SCSDC was the most cost-effective service offering. Although ENA eventually lowered its pricing in the MNPS contract to match the pricing in the SCSDC bid proposal, this amendment was nearly a year after SCSDC submitted its FCC form 471 application.

With respect to SCSDC's arguments that the consortium will suffer significant harm if USAC does not reverse its decisions and that the denials would set a

precedent requiring schools and libraries to purchase the cheapest services, regardless of quality and other factors, USAC cannot make policy decisions.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:  
<http://www.usac.org/sl/about/program-integrity/appeals.aspx>.

We thank you for your continued support, patience and cooperation during the appeal process.

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Billed Entity Number: 128277  
Form 471 Application Number: 1020094  
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Universal Service Administrative Company  
Schools & Libraries Division

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Administrator's Decision on Appeal – Funding Year 2014-2015

March 15, 2016

Charles W. Cagle  
Lewis, Thomason, King, Krieg & Waldrop, P. C.  
424 Church Street, Suite 2500  
P. O. Box 198615  
Nashville, TN 37219

Re: Applicant Name: SCOTT COUNTY SCHOOL SYSTEM  
Billed Entity Number: 128350  
Form 471 Application Number: 964508  
Funding Request Number(s): 2621204  
Your Correspondence Dated: December 04, 2015

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2621204  
Decision on Appeal: **Denied**  
Explanation:

- The FRN was denied because the applicant failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). In addition, SCSDC appeal did not justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution.

SCSDC argues there was a valid contract under Tennessee law and that there was offer and acceptance. SCSDC explains that the memorialization of the contract was through the MNPS contract that was offered as an alternative in ENA's bid proposal to SCSDC. SCSDC also asserts that the FCC lessened the written contract requirement in the E-rate Modernization Order and that there was a legally binding agreement based on ENA's performance via the MNPS contract.



SCSDC asserts there was an offer and an acceptance and a valid contract existed under Tennessee law.

USAC does not have evidence of valid acceptance. SCSDC refers to a March 4, 2013 award letter in its appeal, but a copy of this award letter was not provided.

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Although there are provisions in the Tennessee code that would allow SCSDC to use certain contracts that are executed by other local governmental units or LEAs, the provisions cited by SCSDC did not become effective until July 1, 2013 and were to apply to contracts that were executed on or after that date. In addition, the former Tennessee statutes for allowing local governmental units and LEAs to purchase off of existing contracts would not apply to the 2011 Metro-Nashville contract for two reasons. Section 12-3-1004(b)(1)-(2), allowed LEAs to purchase "equipment" based on another LEA's existing contract. ENA's contract with Metro-Nashville was not limited to "equipment." Further, section 12-3-1004(c)(1)-(2) allowed local governmental units to purchase "same goods and equipment" where the unit price did not exceed ten thousand dollars. The 2011 Metro-Nashville contract would not fall within this provision because it was for services and not limited to "goods and equipment" and the unit price was greater than \$10,000.

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The claim that ENA's bid was lower than AT&T's prices elsewhere under a state contract does not change the fact that the price of the ENA bid was \$3 million more than the price of AT&T's bid. Comparing ENA's SCSDC bid to an entirely unrelated AT&T bid is not a fair comparison.

SCSDC did not provide any supporting documentation to support this assertion. Instead, SCSDC cites to a portion of the AT&T bid that describes AT&T's projected timeline for installation after the contract has been awarded. While SCSDC argues that this language excludes installation costs, this section does not mention costs associated with installation and is in direct response to SCSDC's question, "What delivery concerns do you have in performing this contract?" AT&T's response to the question, and the title of this particular section, is "AT&T has no delivery concerns in support of this contract." SCSDC has misconstrued the meaning of this portion of AT&T's bid language in its appeal.

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Although SCSDC asserts that it complied with the FCC's competitive bidding rules, SCSDC did not demonstrate that it selected the most cost-effective bid. SCSDC did not provide any supporting documentation to justify the selection of ENA's bid, which was \$3 million more than the AT&T bid, as the most cost-effective solution. In addition, SCSDC has not explained how its decision to piggyback off the MNPS contract which had higher pricing than ENA's bid proposal to SCSDC was the most cost-effective service offering. Although ENA eventually lowered its pricing in the MNPS contract to match the pricing in the SCSDC bid proposal, this amendment was nearly a year after SCSDC submitted its FCC form 471 application.

With respect to SCSDC's arguments that the consortium will suffer significant harm if USAC does not reverse its decisions and that the denials would set a

precedent requiring schools and libraries to purchase the cheapest services, regardless of quality and other factors, USAC cannot make policy decisions.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Bill Hall

Charles W. Cagle  
Lewis, Thomason, King, Krieg & Waldrop, P. C.  
424 Church Street, Suite 2500  
P. O. Box 198615  
Nashville, TN 37219

Billed Entity Number: 128350  
Form 471 Application Number: 964508  
Form 486 Application Number:





Schools and Libraries Program

## Demand Payment Letter

( Funding Year 2013: July 1, 2013 - June 30, 2014 )

March 15, 2016

Matt Marcus

DAYTON CITY SCHOOL DISTRICT

520 CHERRY ST

DAYTON, TN 37321 1482

Re: Form 471 Application Number: 918525  
 Funding Year: 2013  
 Applicant's Form Identifier: Year 2013 Dayton City  
 Billed Entity Number: 128277  
 FCC Registration Number: 0011930955  
 SPIN: 143030857  
 Service Provider Name: ENA Services, LLC  
 Service Provider Contact Person: Rex Miller  
 Payment Due By: 4/14/2016

You were previously sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is attached to this letter.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

USAC's role is to administer the federal universal service funds. USAC does not collect or disburse funds. USAC's role is to administer the federal universal service funds. USAC does not collect or disburse funds. USAC's role is to administer the federal universal service funds. USAC does not collect or disburse funds.

## EXHIBIT D

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with your service provider to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Applicant" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

Use one of the appropriate addresses listed below to send payments to USAC.

### U.S. Postal Service and Standard Mail for Payments:

USAC  
PO Box 105056  
Atlanta, GA 30348-5056

### Courier and Overnight Packages:

USAC  
Lockbox 105056  
1075 Loop Road  
Atlanta, GA 30337  
(404) 209-6377

### ACH payments:

USAC requests that all ACH payment be sent in CCD+ format to:  
ABA Routing #071000039, Account #5590045653

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Complete Program information is posted to the SLP section of the USAC website at [www.usac.org/slp/](http://www.usac.org/slp/). You may also contact the SLP Client Service Bureau by email using the "Submit a Question" link on the SLP website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100. Contacting SLP for questions does not change the deadline for your response to this Letter.

Universal Service Administrative Company  
Schools and Libraries Program

cc: Rex Miller  
ENA Services, LLC

**Funding Commitment Adjustment Report**  
**Form 471 Application Number: 918525**

Funding Request Number: 2506944  
 Services Ordered: INTERNET ACCESS  
 SPIN: 143030857  
 Service Provider Name: ENA Services, LLC  
 Contract Number: 2-225071-00  
 Billing Account Number: Dayton City Schools  
 Site Identifier: 128277  
 Original Funding Commitment: \$36,000.00  
 Commitment Adjustment Amount: \$36,000.00  
 Adjusted Funding Commitment: \$0.00  
 Funds Disbursed to Date: \$23,116.80  
 Funds to be Recovered from Applicant: \$23,116.80  
 Funding Commitment Adjustment Explanation:

We have completed our review of the competitive bid process conducted by the Sweetwater City School District Consortium that utilized Funding Year (FY) 2013 FCC Form 470# 283390001111946. Dayton City School District is listed as a member of the Sweetwater City School District Consortium and also relied upon FCC Form 470# 283390001111946 in awarding services to ENA Services, LLC (ENA) in FY2013, FY2014 and FY2015. Based on our review, we have determined that no valid contract exists between Sweetwater City School District Consortium and ENA. When asked to produce a copy of the related contract, Sweetwater provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract Number 2-225071-00) that was signed and executed on March 7, 2011. During this review, Sweetwater also stated "the cost proposals [from AT&T and ENA] to the Sweetwater bid were lower than the cost proposed in the previous consortium procurement with MNPS." Sweetwater ultimately selected MNPS pricing instead of executing a contract with ENA based on the lower pricing offered to Sweetwater. Thus, there was no contract between Sweetwater City School District Consortium and ENA to provide to USAC demonstrating that Sweetwater selected the most cost effective solution. The FCC Form 470 issued by Sweetwater City School District Consortium, FCC Form 470# 283390001111946, was issued on 1/29/13 and had an Allowable Contract Date (ACD) of 2/26/13. Sweetwater City School District Consortium also issued Request for Proposal (RFP) # 13-1 in conjunction with the posting of the FCC Form 470. Thus, the bidding process conducted by Sweetwater City School District Consortium is independent of the bidding process established between Metropolitan Nashville Public Schools and ENA. Moreover, there is no provision in the Metropolitan Nashville Public Schools contract with ENA, or in the underlying RFP and ENA bid proposal, that allows for the Sweetwater City School District Consortium to piggy-back onto that contract. This contract was established prior to the ACD of the Form 470 issued by the Sweetwater City School District Consortium. Therefore, Sweetwater City School District Consortium failed to establish that a valid contract exists between Sweetwater City School District Consortium and ENA and all FRNs that utilized this FCC Form 470# 283390001111946 are denied. Consequently, FY2013 FCC Form 918525 FRN 2506944 and any future funding requests that reference FCC Form 470# 283390001111946 are denied and any commitments will be rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Based on the documentation provided and reviewed, we determined that Sweetwater Consortium did not choose the most cost-effective bid offering. ENA Services, Inc. (ENA) and AT&T submitted bids to provide E-rate services. Sweetwater selected ENA to provide its E-rate services. ENAs bid proposal was \$9,336,396, \$3 million more than AT&Ts \$6,053,804.04 bid. USAC evaluated Sweetwaters competitive bidding process and the services requested and determined that the applicant did not select the most-cost effective offering. Sweetwater awarded maximum points or near maximum points to ENA in all categories besides eligible cost. Sweetwater



## EXHIBIT D

scored AT&T lower in the categories that are not eligible cost of goods and services. Sweetwater was also afforded an opportunity to explain if special circumstances existed that influenced its selection decision. Sweetwater stated AT&T's bid had "defects" and provided "incomplete and/or inadequate responses" which "had the cumulative effect of offsetting the value of a lower sticker price." Sweetwater also stated they had a "lack of confidence in AT&T's ability to deliver the services requested by the RFP" and indicated "the bid team clearly determined that AT&T's bid was deficient and therefore, scored the RFP consistent with that determination." Sweetwater acknowledged that the price differential is "significant." Lastly, Sweetwater indicated that ENA's service offering was unique and was not comparable to AT&T services. A thorough review of the bids provided by ENA and AT&T shows that the bids are similar in the services offered. The Managed Internet Access service, Managed VoIP, and Managed Video Conferencing services offered by both of the services providers in their bids contain similar Network infrastructure, similar Network Support, similar On Premise Network Equipment, similar Monitoring Service, both have similar experience and operate in Tennessee, both have extensive experience with the e-rate program, and both service providers provided references from past customers who were satisfied with the service providers. The circumstances presented by Sweetwater do not justify the selection of a bid over \$3 million more than a competing bid and it has been determined that Sweetwater failed to adhere to the requirements that applicants select the most cost-effective bid offering; therefore, all FRNs that relied upon FCC Form 470# 283390001111946 and its competitive bid process in the award of services to ENA are subsequently denied. Consequently, FY2013 FCC Form 918525 FRN 2506944 and any future funding requests that reference FCC Form 470# 283390001111946 are denied and any commitments will be rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING

U.S. Department of Education, Federal Reserve Bank of Atlanta

03/05/2013





Schools and Libraries Program

## Demand Payment Letter

( Funding Year 2014: July 1, 2014 - June 30, 2015 )

March 15, 2016

Bill Hall

SCOTT COUNTY SCHOOL SYSTEM

PO BOX 37 , 208 COURT STREET  
HUNTSVILLE, TN 37756

Re: Form 471 Application Number:	964508
Funding Year:	2014
Applicant's Form Identifier:	128350-Y17-ENAVideo
Billed Entity Number:	128350
FCC Registration Number:	0011672631
SPIN:	143030857
Service Provider Name:	ENA Services, LLC
Service Provider Contact Person:	Rex Miller
Payment Due By:	4/14/2016

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Universal Service Administrative Company  
Schools and Libraries Program

cc: Rex Miller  
ENA Services, LLC